

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 110 of 1985

with

FIRST APPEAL Nos 546 of 1980 & 340/81

For Approval and Signature:

Hon'ble MR.JUSTICE S.D.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
 2. To be referred to the Reporter or not?
 3. Whether Their Lordships wish to see the fair copy of the judgement?
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge?

SHIVLAL R. DECEASED BY HIS HEIRS-RAMESHBHAI SHIVLAL

Versus

CHIMANLAL AMBALAL TRIVEDI

Appearance:

1. Civil Revision Application No. 110 of 1985
MR PV NANAVATI for Petitioners
SERVED for Respondent No. 2, 3, 4, 5
 2. First Appeal No 546 of 1980
MR PV NANAVATI for Petitioners
UNSERVED for Respondent No. 1
SERVED for Respondent No. 2, 3, 4, 5
 - 3 First Appeal No.340/81
Mr.S.N.Shelat for petitioner
Mr.P.V.Nanavaty for respondent
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CORAM : MR.JUSTICE S.D.SHAH

Date of Decision: 17/6 and 2/7 of 1997

ORAL JUDGEMENT

1. This CRA is filed under section 29(2) of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947. The petitioner claims to be the tenant of the suit property situated opposite Gujarat College, Ellisbridge, Ahmedabad having Municipal Census Nos 310/15 and 310/18 for the last more than 40 years. The case of the petitioner is that initially he started hotel business in the said premises and thereafter entered into a partnership with the respondent No.1 in the year 1970 and started business in the name and style of "New Mysore Cafe". The said partnership came to be dissolved and after dissolution of partnership tenancy rights remained with the petitioner. It appears that the original land lady-Kasturben instituted HRP Suit No.3039/64 against the present petitioner-landlord for possession of the suit property. Therein compromise was reached between the parties. The execution proceedings being Darkhast No.476/70 were initiated against the petitioner and the executing court ordered possession of the suit premises to be given to the landlady. The petitioner preferred appeal to the appellate bench of the Small Causes court which has rejected the prayer for possession. The landlady thereupon preferred revision application being Revision Application No.381/74 before this court and this court on February 25, 1975 rejected the said application. It appears that thereafter present petitioner instituted Civil Suit No.3709/75 in the City Civil Court for dissolution and accounts and also prayed for injunction to the effect that the respondent No.1 should not interfere with his possession. Said suit was dismissed. Appeal being Appeal No.5760/80 was preferred before this Court. On application for stay the interim relief was granted. It appears that thereafter the respondent No.1 Chimanlal Ambalal Trivedi filed HRP Suit No.2709/85 in the Small Causes Court at Ahmedabad inter alia alleging that he was the subtenant of the suit premises. The Small Causes court dismissed the said suit. The opponent thereupon preferred appeal before the appellate bench and the appellate bench decided the said appeal being Appeal No.1/80 and dismissed the said appeal on 28.1.1983.

2. In the meanwhile, the respondent No.1 herein filed another suit being Suit No.482/80 inter alia alleging that the petitioner has agreed to sell his

tenancy rights and good will of the suit premises to him. The said suit was dismissed on 10.9.90. The City Civil Court recorded finding that the alleged document of agreement to sell was false and fabricated and no consideration is being paid to the plaintiff.

3. Thereafter the respondent No.6 has alleged that he has purchased the suit premises and the petitioner herein apprehended that the respondent Nos 1 to 5 trying to oust him and may surrender the possession of the suit property to the respondent No.6 and therefore the present petitioner instituted HRP Suit No.1898/83 before the Small Causes court for declaration and injunction. The trial court issued injunction restraining the respondents from taking possession of the suit premises. The respondents, however, were successful in obtaining possession of the premises and the Small Causes Court was pleased to appoint the receiver. Initially injunction which was granted earlier was vacated. Being aggrieved thereby the petitioner preferred AO No.82/83 before the appellate bench of the Small Causes court and the appellate bench dismissed the said appeal on 12.11.1984

4. It is against said order of the appellate bench of the Small Causes court, dated 12.11.1984 that the present petitioner preferred this civil revision application and this court has issued rule nisi and granted interim relief.

5. Mr.P.V.Nanavaty, Ld.advocate for the petitioner has vehemently urged that the judgment and order of the appellate bench of the Small Causes Court is not maintainable in law and is perverse. He further submitted that the order is, in every respect, not maintainable.

6. Having heard Mr.Nanavaty at length and having gone through the concurrent findings of the appellate bench of the small causes court as well as the Small Causes court this court has no manner of doubt that the findings reached by two courts below are concurrent findings and the courts below have jurisdiction to reach such findings. No jurisdictional error worth its name is pointed out to this court. No error of law which has resulted into exercise of jurisdiction or nonexercise thereof committed by the courts below is pointed out. In that view of the matter no interference of this court is called for. CRA is therefore required to be dismissed and is hereby dismissed. Interim relief granted earlier by this court is vacated. Rule is discharged. No costs.

7. By order passed by the Ld.single judge of this court this this CRA was directed to be heard with the aforesaid two First Appeals. It is reported to this court that the FA No.340/81 is finally decided by N.B.Patel,J(as His Lordship then was) by judgment and order, dated 16.10.91. It appears that the said FA came to be withdrawn before effective hearing and permission was granted, with the result that the said FA was disposed of as withdrawn before effective hearing. As regards FA No.546/80, it shall have to be stated that it was filed by Shivram Ramchandra Valand who was the appellant and plaintiff in CS No.2709/75. Chimanlal Ambalal Trivedi who is the respondent No.1 in the present revision application was the defendant in the said suit and appeal was preferred against the judgment and decree passed by the City Civil Court in CS No.2709/75. It was decided by the judgment and decree dated 29.2.80 by the Ld.City Civil Judge. The suit of Shivram Ramchandra Valand who was the plaintiff thus came to be dismissed. It was the suit for dissolution of partnership firm and for taking accounts interalia contending that the plaintiff was the tenant in the very premises covered by the CRA and he claimed to be the tenant since more than 45 years prior to the date of the suit. Various proceedings to which reference was made in the judgment rendered by me in this CRA were reiterated in such suit and the defendant by his written statement resisted his claim interalia contending that the defendant was in possession of the suit premises as tenant and that the plaintiff was the landlord of the defendant. The Ld.City Civil Judge thereupon framed issues at Exh.22 and the issue as to whether there was the partnership between the parties in the name and style known as "New Mysore Cafe" was decided in the negative. Issue No.5 as to whether the defendant--Chimanlal Ambalal Trivedi proved that the partnership deed dated 23.10.70 was sham and bogus and it did not create any genuine partnership was decided in favour of defendant. In view of the aforesaid finding the suit was, as aforesaid, dismissed and it is the very dispute which was raised before this court in the CRA No.110/85. Very contentions were agitated with respect to very premises between the same parties in the HRP suit and in such suit reference was made to earlier suits being CS Nos 2709/75 and 482/78. In the body of my judgment I have set out these facts and since after considering all the facts and circumstances and the submissions made by Mr.Nanavaty I have dismissed the CRA. FA No.546/80 is also liable to be dismissed and the judgment and order passed by the trial court on 29.2.80 is required to be confirmed. FA No.546/80 accordingly stands dismissed. No order as to costs.

